

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:SB:8:SD:TL:15034-91

KNSommers

date: JUL 19 2002

to: TEFRA Team 106, TEFRA Dept. 1, Research and Analysis Operations
Brookhaven Compliance Services
Attn: Beth Delfoss

from: San Diego Associate Area Counsel, SBSE

subject: Refund claim statute of limitations
[REDACTED] project

Partners in [REDACTED]-sponsored partnerships have filed claims for refund with respect to the year in which they disposed of their partnership interest. These "basis adjustment" claims request overpayments for the disposition years due to a final partnership-level determination disallowing partnership loss deductions in earlier years, resulting in an increased partnership basis, and corresponding increased capital loss, in the disposition year. You requested clarification concerning the applicable statutes of limitation for allowance of overpayments relating to these claims.

ISSUE

What statutes of limitation control the allowance of overpayments with respect to the [REDACTED] partnership interest disposition loss claims?

CONCLUSION

The claim for refund relating to the [REDACTED] partnership disposition loss must be filed within the period provided in I.R.C. § 6511(a) with respect to the taxable year in which the partnership disposition loss occurred, or, alternatively, within the period provided in § 6230(2)(B) with respect to affected items.

FACTS

Numerous [REDACTED] partners filed refund claims with respect to the taxable year for which they reported a capital gain or capital loss as a result of the sale of their partnership interest. In these refund claims the [REDACTED] partners alleged that

the settlement they entered into with Appeals (Form 870-P(AD)), concerning the loss claimed in the initial year of investment, caused them to report additional partnership income, which, in turn caused an increase to their basis in their partnership interest. The partners claimed a refund ("basis claim") to the extent this basis adjustment changed the amount of gain or loss originally reported.

Your office provided copies of a refund claim (Form 1040X for [REDACTED] filed on or about [REDACTED], a copy of which is enclosed. The 1040X claims an increased capital loss for tax year [REDACTED] based upon the disposition of an [REDACTED] partnership interest, and a long term capital loss carryforward to [REDACTED], thereby generating an overpayment for [REDACTED]. The taxpayer settled her [REDACTED] TEFRA partnership case in late [REDACTED], agreeing to an increase in tax based upon a partial disallowance of the [REDACTED] [REDACTED] partnership loss on her [REDACTED] taxable year. The assessment with respect to this TEFRA partnership settlement was made on [REDACTED]. According to the refund claim, the [REDACTED] tax liability was paid in full when the return was filed in [REDACTED]. Attached to the refund claim was a letter from the TMP of the [REDACTED] partnership which indicated that a "basis claim" refund was available to any investor who had previously settled with IRS Appeals, or whose case was linked to the TEFRA partnership cases for which Decisions were entered in [REDACTED].

You requested our advice as to whether the statute of limitations on refunding the claimed [REDACTED] overpayment has expired.

LEGAL ANALYSIS

In a prior memorandum issued by this office on January 6, 2000, we determined that this adjustment to basis was attributable to the Appeals settlement and was therefore permissible under I.R.C. § 6230(c)(1)(B), as long as the claim was timely filed in accordance with I.R.C. § 6230(c)(2)(B).

In addition, partners who had not accepted the Appeals settlement, whose individual cases remained linked to the partnership level proceedings in Tax Court, are now being assessed with respect to the partial disallowance of the partnership loss claimed in the initial year of investment, following the entry of decisions in the Tax Court case and such decisions becoming final.

It is our understanding that the "partnership disposition" years in the [REDACTED] partner cases are generally [REDACTED], [REDACTED] or [REDACTED]. Without reference to the TEFRA partnership Code

provisions, the basic statute of limitation of allowance of refund claims requires such claims to be made no later than three years after the return was filed or two years after the tax was paid, whichever is later. I.R.C. § 6511(a). It does not appear that any significant number of the partnership disposition loss refund claims were made within the period specified in § 6511(a).

Although claims for refund of tax paid for a particular taxable year may be untimely under § 6511(a), if such claims related to a partnership affected item they will be covered by the statute of limitations under the TEFRA partnership provisions of the Internal Revenue Code.

Generally, I.R.C. § 7422(h) prohibits actions being brought for a refund attributable to partnership items. However, one exception to this rule is if the claim falls within the provisions of I.R.C. § 6230(c). The provisions relevant to the claims being filed are I.R.C. §§ 6230(c)(1)(B) and 6230(c)(1)(C).

Section 6230(c) provides, in part, as follows:

(1) In general. A partner may file a claim for refund on the grounds that-

(B) the Secretary failed to allow a credit or to make a refund to the partner in the amount of the overpayment attributable to the application to the partner of a settlement, a final partnership administrative adjustment, or the decision of a court in an action brought under section 6226 or section 6228(a), or

(C) the Secretary erroneously imposed any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item.

The "basis claims" fall within the exception provided for at I.R.C. § 6230(c)(1)(B). This section provides that a partner may file a claim for refund on the grounds that the Secretary failed to allow a credit or make a refund to the partner "attributable to" the application to the partner of a settlement.

Under the provisions of I.R.C. § 6230(c)(2)(B) as it pertains to the [REDACTED] "basis" claims, any claim under paragraph (1)(B) must be filed within 2 years after either (1) the day on which the settlement is entered into, or (2) the date the decision of the court becomes final. I.R.C. § 6230(c)(2)(B)(i) and (iii). Therefore, any claim requesting a refund with respect to gain/loss that was reported by an [REDACTED] investor, for the year this investor sold his Project partnership interest (or otherwise

disposed of such interest), must be filed within 2 years from the date the Form 870-P(AD) was signed on behalf of the Commissioner, if the investor's case was resolved under the Appeals settlement, or within 2 years after [REDACTED], if the investor's case was linked to the decided Tax Court partnership case.

In the case you presented, the regular statute of limitations, under I.R.C. § 6511(a), on a refund of the [REDACTED] tax paid in [REDACTED] has expired.

Because the "basis claim" is attributable to the application of the settlement of a partnership item, it is covered by § 6230(c)(1)(B), and the alternative TEFRA statute of limitations under § 6230(c)(2)(B)(i) also applies. That section provided a two-year window after the date of the settlement for the taxpayer to file such a claim. The [REDACTED] "settlement date" had to have occurred on a date prior to [REDACTED], when the additional tax pursuant to the settlement for the tax year [REDACTED] was assessed. Thus, the two-year period under § 6230(c)(2)(B)(i) had expired prior to [REDACTED]. The Form 1040X in issue was not filed until [REDACTED]. Allowance of the refund claim is therefore barred by the statute of limitations.¹

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney-client privilege. If disclosure becomes necessary, please contact this office for our views.

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By: _____
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¹ Your June 14, 2002, Email referred to the Service's practice of allowing [REDACTED] basis claims "for up to 2 years from the date of payment of the TEFRA assessment under mitigation." It appears that the Service was actually employing the 2-year TEFRA limitation provisions under §6230(c)(2)(B)(i), and not mitigation. This office previously provided an opinion to the Service that the mitigation provisions (I.R.C. §§ 1311-1314) do not apply to the [REDACTED] partnership cases.